IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.1245 OF 2005

M/s.Otarmal Kantilal & Co. Plaintiff

versus

Usha Jaiprakash Patade & another Defendants

Mr.N.H.Nikumbh i/by Tushar Goradia & Co. for plaintiff.

None for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th July 2005

PC :

1. Mr.Nikumbh appearing for plaintiff tenders an affidavit proving service of writ of summons. Same is taken on record and marked "X" for identification. He tenders original documents along with list. Same is taken on record and marked "X-1" for identification.

2. Claim in the suit is arising out of a Bill of Exchange which is at Exhibit-A, dated 4th March 2004. The same is drawn by first defendant on the second defendant who has accepted it. The

address of the second defendant as well as first defendant is set out in the Bill of Exchange. The Bill of Exchange was presented on 3rd April 2004 to second defendant but it was dishonoured. The dishonour was notified to the first defendant by the plaintiff and even the first defendant has failed to comply with the demand and/or requisition of the plaintiff. The suit is, therefore, on a negotiable instrument and the plaintiff claims interest thereon at the statutory rate.

3. The writ of summons was served after the suit was instituted on 5th April 2005. Suit is maintainable as a summary suit. Claim is within limitation. The first defendant has not filed appearance though writ of summons was duly served. The same is not disputed even by the second defendant. He has duly received the notice of demand and also the duplicate writ of summons. The affidavit filed proving service shows that the duplicate copy has been served on the second defendant who accepted the same and acknowledged receipt thereof. I have verified address from the cause of title as well as from the affidavit of the bailiff. Thus, even second defendant has not disputed the claim.

4. In the circumstances, there will be a decree as prayed. Refund of court fees as well as computation of advocates costs as per rules.

(S.C.DHARMADHIKARI, J.)